



# California Fair Political Practices Commission

January 20, 1989

Peter T. Zamboni  
City Attorney  
City of Grass Valley  
125 East Main Street  
Grass Valley, CA 95945

Re: Your Request for Advice  
Our File No. A-89-021

Dear Mr. Zamboni:

This is in response to your letter requesting advice on behalf of Brian Bennallack, a member of the Grass Valley City Council, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

May Councilman Bennallack participate in zoning decisions concerning real property within three hundred feet of real property in which he has an ownership interest?

## CONCLUSION

Councilman Bennallack is prohibited from participating in the matter, unless it can be established that the zoning decisions will have no financial effect on his property.

## FACTS

On August 2, 1988, the owner of 2.67 acres of land immediately adjacent to property owned by Councilman Bennallack applied to the Grass Valley Planning Commission to have the property rezoned from R-1 to R-2. Under Grass Valley's zoning regulations R-1 zoning permits the building of single family dwellings while R-2 would allow the building of duplexes.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

The proposed plan would divide the 2.67 acres of land into five lots zoned R-2. One of the lots has an existing retirement home and residence located on it. The other four lots will each have one duplex, for a total of eight new residences. The percentage of Grass Valley's population affected by this rezoning would be less than one percent.

Councilman Bennallack is a part owner of the land immediately adjacent to the land to be rezoned. Councilman Bennallack's land is just outside the Grass Valley city limits in Nevada County. The value of his interest in the real property is more than \$1,000.

Although letters in opposition to the rezoning indicate that the surrounding property values would decrease if the duplexes are in fact built, it is unclear whether the value of Councilman Bennallack's property will be increased or decreased.

The application for rezoning was denied by the planning commission. The owner has appealed the decision to the Grass Valley City Council to be heard January 24, 1989.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1000) or more.

Section 87103(b).

As a member of the Grass Valley City Council, Councilman Bennallack is a public official. (Section 82048.) According to the facts you have provided, the councilman's property is worth more than \$1,000. Thus, Councilman Bennallack is prohibited from making or in any way participating in decisions which would have a foreseeable, material financial effect on his property that is distinguishable from the effect on the public generally.

An effect is considered reasonably foreseeable if there is substantial likelihood that it will occur. Certainty is

not required; however, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The effect of a decision on real property in which an official has a direct, indirect or beneficial ownership interest, is material if:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interests.

Regulation 18702.3(a)(1)  
(copy enclosed).

According to the facts you have provided, Councilman Bennallack's property is immediately adjacent to the property subject to the zoning decision. Since the councilman's property is within 300 feet of the property that is the subject of the zoning decision before his agency, there is a presumption that the financial effect on the councilman's property will be material. (Regulation 18702.3(a)(1); Phelps Advice Letter, No. A-88-429, copy enclosed.) This presumption applies despite the fact that the councilman's property is located just outside the city limits of Grass Valley. According to Sections 82033 and 82035, real property shall be deemed to be "within the jurisdiction" of a local government agency if the property or any part of it is located not more than two miles outside the boundaries of the jurisdiction.

In your letter you stated that the value of Councilman Bennallack's real property will be affected by the zoning decision, although it is not clear whether the effect on the councilman's property will be an increase or a decrease. Whether the effect on the councilman's property is positive or negative is of no consequence. Any effect on the value of the councilman's land would require his disqualification. (Dowd Advice Letter, No. A-88-214, copy enclosed.)

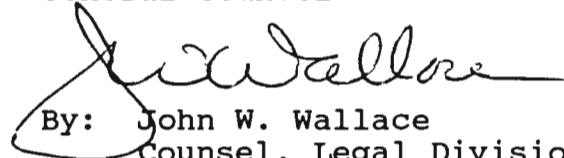
In addition, since the percentage of Grass Valley's population effected by this rezoning would be less than one percent, it is clear that the effect on Councilman Bennallack would be distinguishable from the effect on the general public as a whole. (Regulation 18703; Burnham Advice Letter, No. A-86-210, copies enclosed.)

Peter T. Zamboni  
January 20, 1989  
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If you have any further questions regarding this matter,  
please feel free to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

DMG:JWW:plh

Enclosures

# City of Grass Valley

FPPC  
JAN 6 9 18 AM '89

OFFICE OF CITY ATTORNEY

January 5, 1989

Fair Political Practices Commission  
Attention: John Wallace  
428 J Street, Suite 800  
Sacramento, CA 95814

RE: Conflict of Interest  
Concerns of City Councilman Brian Bennallack

Dear John,

Pursuant to our conversation of January 5, 1989, I am requesting on my behalf and on behalf of Brian Bennallack that we receive a written opinion from the Fair Political Practices Commission in regards to the following facts:

1. On August 2, 1988, Jerry Borgnis, a City Council Member applied to the City of Grass Valley Planning Commission for a zoning change from R-1 to R-2 zoning. Under our zoning regulations, R-1 allows one residence per lot and there would be approximately four lots per acre if this property were to be subdivided so four residences could be put in under the current zoning with a subdivision.
2. The proposal is to divide the 2.67 acres into five lots. One of those lots will have a retirement home and a residence, which are currently in existence and have been for a period of time. The other four lots will each have one duplex for a total of eight new residences.
3. The City of Grass Valley currently has approximately 8,700 residence so the percentage of the population effected would be far less than one percent, extremely minimal.
4. Mr. Brian Bennallack owns a piece of property immediately adjacent to the property being developed. The developed property is within the City Limits of the City of Grass Valley and Brian Bennallack's property is outside the City Limits of Grass Valley. The property line between the two parcels is the City boundary.

5. Mr. Bennallack's property is shown highlighted in "yellow". Mr. Borgnis's property where the development is proposed is outlined in "red" and hashmarked. Mr. Bennallack's property is valued on the tax rolls as land \$29,131, improvements \$73,351 for a total gross of \$102,482. No exemptions and the net shows \$102,482. Mr. Bennallack owns the property as joint tenants with Lois Ericson as to 50% and Allen and Lucille McCrea also own 50% as joint tenants.
6. The property owned by Councilman Bennallack is within the County of Nevada, is .088 acres, is zoned R-A000.
7. It is unclear whether the land value of Mr. Bennallack will be increased or decreased because of the development proposed immediately adjacent to his property. There is a possibility that some sewage connections might be allowed, however, there is no decision as to that and it is being decided whether the development itself will have to run private sewage line to the City main trunk.
8. There is letters of opposition to the development, which indicate that the surrounding property values would decrease because of the duplexes so there is a possibility that the property value of Councilman Bennallack would decrease as opposed to increase.
9. Mr. Borgnis's appeal for rezone to the Planning Commission was denied. He is currently appealing that decision to the City Council that will be heard on January 24, 1989.

I would appreciate any input at your earliest convenience. If you have any concerns or questions, please feel free to contact me or my staff and we will provide you with any and all information required.

Thanking you again for your assistance.

Sincerely,

Peter T. Zamboni  
City Attorney

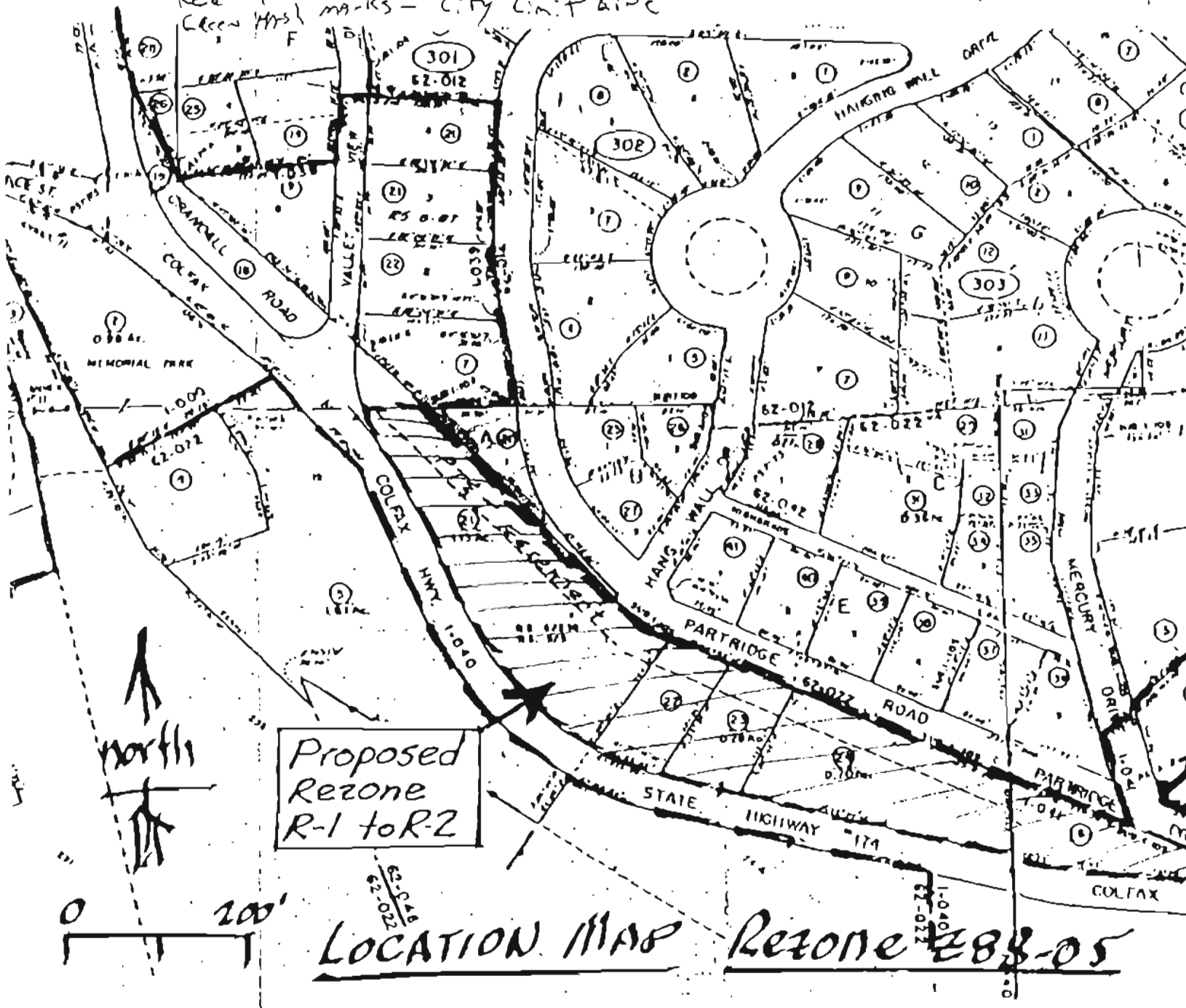
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Attachment-Map

Yellow - Property of Brian Bowler Arch

Red Hash marks - Proposed Development of Councilman Terry Dongus

Green Hash marks - City Limit Line



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Peter T. Zamboni  
City Attorney

PTZ:slo

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Red Hash marks - Proposed Development of Councilman Terry Douglas

Green Hash marks - City Limit Line

Lavender Hash marks  
is also in the City  
limits and NOT within City  
limits

